

1 PRESTON DuFAUCHARD
California Corporations Commissioner
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3 Deputy Commissioner
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Department of Corporations
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9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of THE CALIFORNIA) File No.: 963-7060
CORPORATIONS COMMISSIONER,)
14) SETTLEMENT AGREEMENT
Complainant,)
15)
16 vs.)
17 MID CAL ESCROW SERVICES, INC.,)
Respondent.)
18)
19)
20)

21 This Settlement Agreement is entered into between MID CAL ESCROW SERVICES, INC.
22 (“Mid Cal”) and the California Corporations Commissioner ("Commissioner"), and is made with
23 respect to the following facts:

24 **RECITALS**

25 A. Mid Cal is a corporation in good standing, duly formed and existing pursuant to the
26 laws of the State of California, and authorized to conduct business in the State of California.

27 B. Mid Cal currently holds escrow agent’s license number 963-7060, issued by the
28 Commissioner pursuant to the California Escrow Law.

1 C. George M. Murphy is the President of Mid Cal and is authorized to enter into this
2 Settlement Agreement on behalf of Mid Cal.

3 D. On October 4, 2010, the Commissioner issued an Accusation and Order Imposing
4 Penalties against Mid Cal, pursuant to Financial Code Sections 17608 and 17408 (“Penalty Order”).
5 Mid Cal requested a hearing regarding the merits of the Penalty Order and the Commissioner filed a
6 request to set a hearing date with the Office of Administrative Hearings.

7 E. Mid Cal filed its 2009 Audit Report (“Report”) with the Commissioner on November
8 9, 2010. The report was due on or before April 15, 2010. Under the authority of Financial Code
9 Section 17408, the Commissioner assessed penalties to Mid Cal in the sum of \$39,750.00, reflecting
10 a penalty of \$50 per day for the first five days and \$250.00 for each day thereafter that the Report
11 was not filed pursuant to the Commissioner’s demand, on or about May 19, 2010.

12 F. It is the intention and desire of the parties to resolve these matters without the
13 necessity of a hearing and/or other litigation.

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
15 forth herein, the parties agree as follows:

16 **TERMS AND CONDITIONS**

17 1. Purpose. This Settlement Agreement is entered into for the purpose of judicial
18 economy and expediency, and to avoid the expense of a hearing, and possible further court
19 proceedings.

20 2. Admissions. Mid Cal hereby admits the allegations contained in the Penalty Order.
21 Mid Cal’s admissions herein are solely for the limited purposes of this proceeding and any future
22 proceeding that may be initiated by or brought before the Commissioner against Mid Cal. It is the
23 intent and understanding between the parties that this Settlement Agreement, and particularly Mid
24 Cal’s admissions herein, shall not be binding or admissible against Mid Cal in any action(s) brought
25 against Mid Cal by third parties.

26 3. Suspension. Mid Cal hereby agrees to the immediate issuance by the Commissioner
27 of an Order suspending Mid Cal’s escrow agent’s license (“Suspension Order”) for a period of two
28 weeks, from December 26, 2010 at 12:01 A.M. to January 1, 2011 at 11:59 P.M. and from January 9,

1 2011 at 12:01 A.M. to January 15, 2011 at 11:59 P.M. In connection with the suspension, Mid Cal
2 shall file with the Commissioner at close of business on December 24, 2010, and at close of business
3 on January 8, 2011, a list of all open escrows with escrow numbers and escrow party names along
4 with a copy of the signed escrow instructions and signed deposit receipt(s) for the last opened
5 escrow. For purposes of this Settlement Agreement, the term “open escrow” shall mean an escrow
6 wherein the parties to such escrow have already entered into a binding agreement and monies and/or
7 escrow instructions have been submitted to Mid Cal regarding the transaction. Additionally, Mid
8 Cal will be required to immediately engage its certified public accounting (“CPA”) firm to review
9 the records of Mid Cal after the suspension has been completed and report its findings of compliance
10 with the suspension to the Department within 30 days of completion of the suspension. The
11 Commissioner reserves the right to audit Mid Cal for compliance with the suspension
12 notwithstanding the findings of the CPA review. A copy of the Suspension Order is attached and
13 incorporated as Exhibit A.

14 4. Penalties. Mid Cal agrees that the Penalty Order is hereby deemed a final order. Mid
15 Cal acknowledges that the penalties accrued pursuant to the Penalty Order for the untimely filing of
16 its Report totaled \$39,750.00 as of November 9, 2010, the date it was filed. As full settlement of the
17 Penalty Order, Mid Cal agrees to pay to the Commissioner the sum of \$10,000.00 in penalties. The
18 penalties shall be paid in four equal installments of \$2,500.00 due on or before the first day of each
19 month, commencing February 1, 2011 and ending with a final payment on May 1, 2011. Payment
20 shall be sent to Joanne Ross, DOC ENF, 1515 K St., Ste 200, Sacramento, CA 95814, and payment
21 shall be received at that address on or before the first of each month pursuant to this Paragraph 4.

22 5. Hearing. Mid Cal acknowledges it is hereby withdrawing its request for an
23 administrative hearing under California Financial Code sections 17608 and 17408 in connection with
24 the Penalty Order, and hereby waives its right to a hearing, and to any reconsideration, appeal, or
25 other rights which may be afforded pursuant to the Escrow Law, the California Administrative
26 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
27 with the Penalty Order, Suspension Order, and related matters.

28 6. Payment of Penalties; Revocation. Mid Cal further agrees to an automatic revocation

1 of its escrow agent's license if any installment payment agreed to in Paragraph 4 is not timely paid in
2 strict compliance with the terms thereof.

3 7. Appeal. Mid Cal hereby waives its right to any reconsideration, appeal or other right
4 to review of any finding by the Commissioner pursuant to Paragraph 6 above which may be afforded
5 pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of
6 Civil Procedure, or any other provision of law in connection therewith.

7 8. Remedy Not Exclusive. Mid Cal acknowledges and agrees that the revocation
8 provided for above in Paragraph 6 shall not be the exclusive remedy available to the Commissioner
9 in pursuing future violations but may be sought and employed in addition to any other remedy
10 available pursuant to the Escrow Law.

11 9. Assist Other Agencies. The parties hereby acknowledge and agree that this
12 Settlement Agreement is intended to constitute a full, final and complete resolution of the Penalty
13 Order. The parties further acknowledge and agree that nothing contained in this Settlement
14 Agreement shall operate to limit the Commissioner's ability to assist any other agency (county, state
15 or federal) with any prosecution, administrative, civil or criminal, brought by any such agency
16 against Mid Cal based upon any of the activities alleged in these matters or otherwise.

17 10. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
18 has received, or acknowledges the right to seek, independent legal advice from its attorney(s) with
19 respect to the advisability of executing this Settlement Agreement.

20 11. Reliance. Each of the parties represents, warrants, and agrees that in executing this
21 Settlement Agreement it has relied solely on the statements set forth herein and, if applicable, the
22 advice of its own counsel. Each of the parties further represents, warrants, and agrees that in
23 executing this Settlement Agreement it has placed no reliance on any statement, representation, or
24 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
25 failure of any party or any other person or entity to make any statement, representation or disclosure
26 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
27 party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude

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1 the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
2 Settlement Agreement.

3 12. Complete Agreement. This Settlement Agreement is the final written expression and
4 the complete and exclusive statement of all the agreements, conditions, promises, representations,
5 and covenants between the parties with respect to the subject matter hereof, and supercedes all prior
6 or contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby. This Settlement Agreement cannot be modified, altered
9 or otherwise amended except by an agreement in writing signed by all of the parties hereto.

10 13. Civil Code Section 1654. In that the parties have had the opportunity to draft, review
11 and edit the language of this Settlement Agreement, no presumption for or against any party arising
12 out of drafting all or any part of this Settlement Agreement will be applied in any action relating to,
13 connected to, or involving this Settlement Agreement. Accordingly, the parties waive the benefit of
14 California Civil Code section 1654 and any successor or amended statute providing that, in cases of
15 uncertainty, language of a contract should be interpreted most strongly against the party who caused
16 the uncertainty to exist.

17 14. Counterparts. This Settlement Agreement may be executed in one or more
18 counterparts, each of which shall be an original but all of which, together, shall be deemed to
19 constitute a single document.

20 15. Signatory Authority. Each signatory hereto covenants that he/she possesses all
21 necessary capacity and authority to sign and enter into this Settlement Agreement.

22 16. Severability. The provisions of this Settlement Agreement are severable and the
23 invalidity or unenforceability of any of them will not affect the remainder of this Settlement
24 Agreement.

25 17. Governing Law. This Settlement Agreement shall be governed by and construed in
26 accordance with the laws of the State of California, without reference to conflict of law principles.

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1 18. Binding Effect. All of the provisions of this Settlement Agreement will be binding
2 on, and benefit, the parties and their respective legal representatives, heirs, successors and assigns.

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4 Dated: 12/16/10

PRESTON DuFAUCHARD
California Corporations Commissioner

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6
7 By _____

8 ALAN S. WEINGER
9 Deputy Commissioner

10 Dated: 12/16/2010

MID CAL ESCROW SERVICES, INC.

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12 By _____

13 George M. Murphy, President
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